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Remarks - General

Claims 1-198 have been canceled.

Claims 199 to 228 have been rewritten to overcome the prior art.

The Examiner notes that claims 179-182,184-198 are rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2217700).

The Examiner also notes that Musher teaches ice cream (frozen comestible) on an edible support having at least two discernable (i.e. perceptible) edible members, wherein one portion extends into the ice cream and one portion extends out of the ice cream for holding. Musher teaches stick, which may be completely edible. The end of the stick may include a lollipop that is also connected structure pieces which may include items such as nuts or even a plurality of candy pieces and the lollipop and structure pieces before forming into a composite support may be coated in hard fat, which would prevent the transfer of moisture and improve the adhesion or grip of the frozen comestible.

**A "Coating" and a "Lollipop" which The Office Rely's Upon for Anticipation of "Candy" are Not Elements of Applicant's Independent Claims**

Applicant's independent claims have been rewritten to recite a

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candy support comprising two discernable ingredients. An ingredient is defined as "an element in a mixture or compound." The word compound is defined as "to combine as to form a whole, mix," "to produce or create by combining two or more ingredients or parts." www.dictionary.com

Musher does not comprise a candy support having two discernable ingredients that combine as to form a whole, or that make up a mixture, wherein each of the two discernable ingredients are other than, or NOT an edible coating, as recited in Applicant's claims.

The Examiner has conceded that Musher's candy binder is a coating, as Musher in fact teaches:

"with reference to the binders or coating materials of this invention, two different types of binders or coating materials which may be used, although each operates differently and results in different effects, are sugar, and also edible fats. (page 2, col. 1, lls. 33-43). Page 3, col.1, lls. 26-53. Also page 5, col.2, lls. 70-75, page 6, col. 1, lls. 39-42, and throughout the specification.

In the correspondence mailed 6/01/06, (Response to Arguments, second paragraph,) Examiner notes, "Musher teaches the composite support with two or more ingredients and an additional coating as per Applicants claims 179 and 189."

Contrarily, Applicant's independent claims 179 and 189, state that each of the two discernable ingredients in the support are

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not a coating, "said two discernable edible members each being other than an edible coating..." Applicant's independent claims do not recite the element of a coating.

Under section 102(b) a claim is said to be "anticipated" if comparison of the claimed invention with a prior art reference reveals that each and every element in the claim must be shown or described, organized, and functioning in substantially the same manner as in the prior art reference.

As such, if the coating of Musher is set aside, what elements are left to his support...? What is left to Musher's support, is an edible baked or toasted product, and, as per the Office, cereal flakes as part of the unit structure. What is left is flour, cereal, or grain based products. (Unit structure may comprise nuts or raisins added by a coating to edible baked or toasted flour product, i.e. still not candy). Applicant has remedied the claims to now recite, "comprising two discernable ingredients." There is no flour in candy.

Musher's support, the coating set aside, as claimed by Applicant, is an edible baked or toasted product. One familiar in the art would not purport that Applicant's **candy** support comprising two discernable ingredients has been anticipated by Musher's edible baked or toasted product, which may or may not also contain

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cereal flakes, or even nuts or raisins (cookies may also contain nuts or raisins and are not considered candy. Musher's support also does not comprise a mix of two discernable ingredients to comprise a whole candy.

Applicant's *independent* **candy** claims are not anticipated by flour or grain based products.

**The Elements of Applicant's Independent Candy Claims Define Novel Physical Structure over Musher's Edible Baked or Toasted Product and its Embellishments**

In response to the candy pieces that the Examiner notes on page 5, col. 2, lls. 24-35, these pieces are lollipop pieces, or lollipop ribbon pieces, as a different embodiment, instead of a single lollipop piece, or another configuration of the lollipop, as is the barbed shaped lollipop piece. (page 5, col. 1, lls. 44 - pg 5, col. 2, lls. 1-35.) Specifically Musher recites:

In a still further embodiment of this invention, the stick may first be made so as to have at the end thereof, a piece of candy and particularly a piece of hard candy, as for instance in the form of a lollipop. (Pg. 5, col 1, lls. 54-63):

"The candy material which is attached to the stick, *may be not in just one piece*, but it may be in ribbon form, particularly as curved ribbons, or it may be in the form of bent or curved flakes for instance, or it may be in various other forms so as to more rigidly hold the stick on the unit

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structure and thereby so as to hold it securely within the ice cream or similar block." (Pg. 5, col. 2, lls. 24-31)

A lollipop or lollipop ribbons are also not element(s) of Applicant's independent claims, but rather Applicant's dependent claims 205, 212, 218, and 227. Thus being, Applicant's independent claims still are not anticipated by Musher, who does not comprise a candy support having two discernable ingredients. Dependent claims are not required by the Patent and Trademark Office. In this regard, Applicant's independent claims recite novel physical structure that is independently patentable over the prior art of Musher. Applicant's dependent claims which further recite a moisture barrier and a lollipop on Applicant's candy support are a fortiori and independently patentable over the prior art of Musher. Applicant respectfully requests reconsideration and allowance of the claims.

**As Defined, Candy is Made of Sugar, a Baked or Toasted Product is Made of Flour; A Coating Is Not an Element of Applicant's Independent Claims**

Merrimam-Webster's Intermediate Dictionary defines "candy" as:  
"a sweet made of sugar often with flavoring and filling."

Merrimam-Webster's Dictionary (1964) defines candy as:  
"1. crystallized sugar made by boiling and evaporating cane

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sugar, sirup, etc. \* 2. a solid confection of sugar or sirup, flavored, colored, and often enriched with nuts or fruits."

Merrimam-Webster's Dictionary (1987) defines candy as:

"a confection made from sugar and flavored in a variety of ways."

Cambridge Advanced Learner's Dictionary defines candy as:

"a sweet food made from sugar or chocolate, or a piece of this: a candy bar, a box of candy"

<http://dictionary.cambridge.org/define.asp?key=11093&dict=CALD>

Candy is notably a food made from sugar and which may or may not be embellished with fruits, nuts, and the like. Most foods contain some form of sugar, except meat. A food made with sugar, such as a chocolate chip cookie, butter cookie, or chocolate chip ice cream, or M&M Ice Cream (tm of Mars, inc.), and even plain ice cream, is NOT considered candy, but ice cream, or a cookie. Musher's teaches an "edible baked or toasted product," or "hard crisp food material, (which may be baked on a wood stick)." Both of these supports has FLOUR as the largest or main ingredient, (other than wood), as is true of a *baked or toasted product* or *hard crisp food material* (Page 6, col. 1, lls.43-50). Therefore Musher's support, without the coating, which is NOT an element of Applicant's independent claims (and should not be the basis of a section 102 rejection, if not claimed), is not candy, i.e. sugar

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dissolved in water, but flour, baked with dry heat.( \* above)

**Candy is Produced by Dissolving Sugar in Water and Evaporated Until Crystallization; The Flour of an Edible Baked or Toasted Product if Dissolved in Water Will Not Crystalize and Is Not Candy**

An aspect of determining if a comestible is candy or a baked or toasted product is the manner in which it is made. Candy is made by dissolving sugar in water, and boiling the mixture, evaporating it until crystallization. A baked or toasted product is cooked with dry heat, especially in an oven (not evaporated from water or liquids) (please see below).

Musher teaches an edible baked or toasted product. Musher's support made predominantly with flour, if dissolved in water and evaporated would not crystalize. Musher's flakes or shredded cereal if dissolved in water will not crystalize. The following websites teach about the properties of candy:

<http://www.tagate.com/recipes/candy/candy.shtml> see second paragraph, and entire document.

"Candies are prepared by dissolving sugar in water or milk to form a syrup, and boiling it until it starts to caramelize. Depending on the solvent and the end result of the process, the product may be called candy, caramel, toffee, fudge, praline, tablet or taffy. The recipe used also predicts how hard, soft, chewy or brittle the end result should be."

Also see: <http://en.wikipedia.org/wiki/Candy> second paragraph and entire document  
[http://www.baking911.com/candy/101\\_intro.htm](http://www.baking911.com/candy/101_intro.htm) see candy 101, also see

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[http://www.baking911.com/candy/101\\_ingredients.htm](http://www.baking911.com/candy/101_ingredients.htm), see chart - please note the amount of flour in the ingredients for candy.

Candy does not contain flour, (see chart above).

**BAKED:** To cook (food) with dry heat, especially in an oven. To harden or dry (something) by subjecting to heat in or as if in an oven: bake bricks [Www.dictionary.com](http://www.dictionary.com)

**TOAST, TOASTED** To heat and brown (bread, for example) by placing in a toaster or an oven or close to a fire. [Www.dictionary.com](http://www.dictionary.com)

[http://www.baking911.com/howto/how\\_baking\\_works.htm](http://www.baking911.com/howto/how_baking_works.htm) "The basic ingredients in any dough or batter are usually flour and a liquid (water, milk). Fat (fats, butter, oils, lard), sugar, eggs, salt, leavening agents and flavorings are also used, depending upon the recipe. "

[http://www.baking911.com/howto/bakers\\_percentages.htm](http://www.baking911.com/howto/bakers_percentages.htm) , see first paragraph, "When expressing formulas in the percentage system, 100 pounds of flour always represent 100 percent. Percentages of all other ingredients are based on the flour. With this method the amount of ingredient necessary to produce a given amount of bread can be calculated right down to pounds and fractions of ounces. Example: Bread flour 100 percent, water, variable 60 percent, Yeast, compressed 2 percent, Salt 2 percent, Sugar 5 percent, Shortening 5 percent, Milk, dry, nonfat 6 percent TOTAL FORMULA PERCENT 180 Total formula percent. "

**Musher's Support's Largest Concentration is of Flour and Grain  
Flakes; Candy Does Not Comprise Flour**

Musher's physical structure does not anticipate Applicant's independent claims, and therefore does not anticipate Applicant's invention. Applicant's independent claims do not comprise an edible coating, or a lollipop, or configurations thereof.

Applicant's support is a candy support comprising two discernable ingredients, without the use of a coating, or lollipop.

Applicant's independent claims, and hence Applicant's invention, is not anticipated by the prior art of Musher.



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Applicant's independent claims comprise novel physical structure of a candy support comprising two discernable ingredients for supporting a frozen comestible, which Musher does not have.

Applicant's support can be pure candy, i.e. have two discernable candy ingredients, mixed or layered together, such as a Milky Way support for a portion of ice cream. Musher cannot provide this.

In addition, all the prior art that has been reviewed to date has also shown not to have Applicant's novel elements.

**Musher in View of Firmin Renders a Mess Guard on a Crispy Support Comprised of Flour and Cereal - Not Candy**

The Examiner notes that claims 188 and 194 (mess guard) are rejected under 35 U.S.C. 103(a) as being unpatentable over Musher as applied to claims 179-182, 184-198 (discernable members) further in view of Firmin as teaching of a wrapping partially or entirely or coated with an edible material like cocoa butter for added flavor, especially where inserted in a frozen confection. The Examiner suggests that it would have been obvious to modify Musher to include an edible or inedible mess guard as taught by Firmin to help avoid a messy mass.

Applicant has rewritten the claims to recite the support as having two discernable ingredients. The suggested combined teachings of Musher and Firmin would render an inedible wrapper

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or a coating of cocoa or paraffin to a support that is almost entirely composed of flour, baked in an oven, not boiled on a stove, as above. Musher does not teach of a candy support, or a support having two discernable ingredients, which are dissolved and evaporated from water and mixed or brought together to provide a whole. Placing an edible or inedible wrap or coating on Musher's invention, places a mess guard on a single member "edible baked or toasted product," or flour based baked product, with added cereal or flakes. These combined teachings would not satisfy one familiar art if they had desired to purchase and consume a portion of ice cream supported by one of their very favorite candy bars, such as a Milky Way Bar (Mars, Inc.). Applicant has not provided another degree of an existing product, but has invented an entirely different product with many advantages. The combined teachings of Musher in view of the teachings of Firmin do not anticipate Applicant's independent claims comprising two discernable candy ingredients having a mess guard.

**The Combined Teachings of Musher and Michael Hood Render a Supported Confection Made of Flour, Baked in an Oven and Having Two Handles**

The Examiner notes that claim 183 is rejected under 35 U.S.C. 103(a) as being unpatentable over Musher as applied to claims

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179-182, 184,198, (discernable members and two handles) further in view of Michael Hood (Seattle Weekly, July 1999) (twin handles for a popsicle)

The Examiner also notes that Musher teaches ice cream on a support but is silent in teaching the ice cream includes a plurality of handles for holding with two hands. Michael Hood teaches that popsicle with two handles have been made in Seattle by a company called "Arctic Ice Cream." Therefore it would have been obvious to one with ordinary skill in the art to include a plurality of supports in the ice cream of Musher as taught by Michael.

To the contrary, the application of twin supports to the ice cream/support of Musher would render, as above, twin supports having its largest concentration or base ingredient of flour, unable to be fabricated by boiling on a stove, as is candy. This would teach one in the art of two edible baked or toasted supports having crisp flakes and shredded cereal, with an added coating. This does not anticipate Applicant's independent candy claims comprising two discernable ingredients, having its primary ingredient of sugar, which is crystalized in water upon boiling, regardless of an edible coating. Applicant respectfully submits that Applicant's handles have not been anticipated by the combined teachings of Musher and Michael Hood. Applicant

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respectfully requests reconsideration and allowance of the claims.

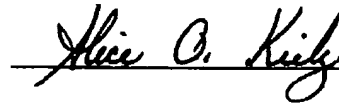
Applicant's novel candy structure for supporting a portion of ice cream is respectfully submitted to be independently patentable over the prior art of Musher under section 102, and comprises surprising advantageous results, for supporting a frozen comestible, which is also unobvious under section 103.

Applicant's dependent claims are submitted to be a fortiori patentable over the prior art of Musher, Firmin and Hood.

Applicant respectfully requests reconsideration and allowance of the rewritten claims.

For all the above reasons, Applicant submits that the claims are now in proper form, and that the claims all define patentably over the prior art. Therefore, Applicant submits that this application is now in condition for allowance, which action I respectfully solicit.

Very Respectfully,



Alice O. Kiely

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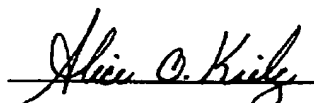
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2006 August 16,

  
Alice O. Kiely